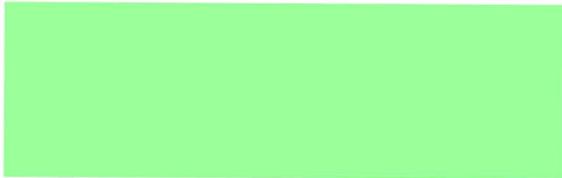




U.S. Citizenship
and Immigration
Services

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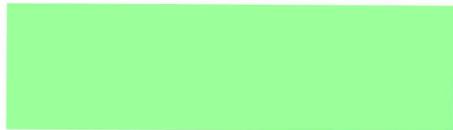


Date: **JUN 05 2013** Office: VERMONT SERVICE CENTER File: 

IN RE: Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

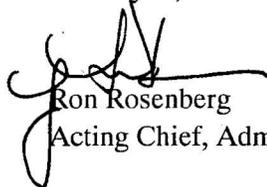


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630 or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by her lawful permanent resident spouse.

The director denied the petition for failure to establish that the petitioner is a person of good moral character. On appeal, the petitioner, through counsel, submits a brief and additional evidence.

Relevant Law and Regulations

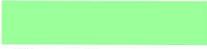
Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien’s spouse. In addition, the alien must show that he or she is eligible for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed



unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

Section 101(f) of the Act, 8 U.S.C. § 1101(f), states, in pertinent part, that:

For the purposes of this Act – No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –

* * *

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in . . . subparagraph[] (A) . . . of section 212(a)(2). . . .

* * *

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. . . .

The evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

The evidentiary guidelines for a self-petition under section 204(a)(1)(B)(ii) of the Act are explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or

all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

Pertinent Facts and Procedural History

The petitioner is a citizen of Poland who entered the United States on June 5, 2001 as a visitor. The petitioner married M-Z¹, a lawful permanent resident of the United States, on October [REDACTED] in [REDACTED] Illinois. The petitioner filed the instant Form I-360 on November 5, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good moral character. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and an appeal was filed by counsel without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal. Counsel subsequently submitted a properly executed Form G-28 that although not timely, has been accepted for adjudication of the instant appeal.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented, the petitioner has not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

Good Moral Character

The record documents the petitioner's pertinent criminal history as follows:

- 1) On January 4, 2007, the petitioner was convicted of resisting arrest and obstruction of justice in violation of section 720-5/31-1 of the Illinois statutes. The petitioner was sentenced to one year of supervised probation which the petitioner completed.
- 2) On October 25, 2000, the petitioner was arrested and charged with theft of property. No court disposition was provided detailing its outcome.

At the time of the applicant's conviction, Illinois Statutes § 720-5/31-1 provided:

- (a) A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer or correctional institution employee of any authorized act within his official capacity commits a Class A misdemeanor.

720 Ill. Comp. Stat. Ann. 5/31-1 (West 2007)

The director correctly determined that the record was insufficient to establish the petitioner's good moral character because the petitioner failed to submit evidence showing the disposition of the

¹ Name withheld to protect the individual's identity.

October 25, 2000 arrest and on a separate offense, was convicted of a crime involving moral turpitude (CIMT) on January 4, 2007. On appeal, the petitioner submits a court disposition stating that the October 25, 2000 charge was stricken from the docket with leave to reinstate. The record therefore establishes that this arrest does not bar a finding of the petitioner's good moral character and to the extent that the director's good moral character determination relied on this, that portion of his decision is withdrawn.

Regarding the January 4, 2007 conviction, counsel concedes that the petitioner's conviction under Illinois Statutes § 720-5/31-1 is a CIMT, but asserts on appeal that the petitioner should not be barred from establishing her good moral character because the conviction was connected to her spouse's abuse. Counsel argues that the petitioner merits a favorable exercise of discretion despite her conviction pursuant to section 204(a)(1)(C) of the Act. A self-petitioner may, according to section 204(a)(1)(C) of the Act, be found to have good moral character despite an act or conviction that would otherwise bar such a finding under section 101(f) of the Act if: 1) the alien's act or conviction is waivable for the purposes of determining admissibility or deportability under section 212(a) or section 237(a) of the Act; and 2) U.S. Citizenship and Immigration Services (USCIS) determines that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty. Although inadmissibility due to a conviction for a crime involving moral turpitude is waivable for self-petitioners under section 212(h)(1)(C) of the Act, the petitioner has not demonstrated a connection between her conviction and her husband's battery or extreme cruelty. In her September 30, 2011 affidavit, the petitioner stated that she married M-Z- at a young age and that he was always abusive. She stated that he became especially violent when drunk, hit her when she was pregnant, and on one occasion, cut her head open causing her to almost die. She stated that she left him for good in 2005 and that most of her incidents with the police occurred during the time that she lived with M-Z-. She stated that the more recent arrests involved situations when M-Z- came looking for her wanting her to return to him; however the petitioner did not give additional details about the November 2006 arrest that led to her obstruction of justice conviction. She did not describe the circumstances surrounding the arrest that led to her conviction, including whether her husband was in any way involved in her commission of this crime.

On appeal, the petitioner submits another affidavit explaining that she did not intentionally provoke the police officer who arrested her in November of 2006. She states that as a result of M-Z-'s abuse, she automatically reacted poorly to the male officer who she thought was being aggressive. She does not mention whether M-Z- was present at the time or if he directly contributed to her arrest. Consequently, the CIMT conviction is not "waivable with respect to the petitioner" in this case under section 204(a)(1)(C) of the Act. The present record thus fails to establish the petitioner's good moral character, as required by section 204(a)(1)(B)(ii) of the Act.

Conclusion

On appeal, the petitioner has not overcome the director's determination that she did not establish her good moral character. She is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act.

Page 6

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above

ORDER: The appeal is dismissed.